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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,949	05/16/2005	George Mauro	NATAPE P16BUSP2	1714
20210 7590 05/25/2010 DAVIS & BUJOLD, P.L.L.C. 112 PLEASANT STREET CONCORD, NH 03301			EXAMINER ALIE, GHASSEM	
			ART UNIT 3724	PAPER NUMBER
			MAIL DATE 05/25/2010	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/534,949	Applicant(s) MAURO, GEORGE	
	Examiner GHASSEM ALIE	Art Unit 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02/17/2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23, 28, 29, 34 and 38-48 is/are pending in the application.
- 4a) Of the above claim(s) 38-41, 43, 46 and 47 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23, 28, 29, 34, 42, 44, 45 and 48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

1. Newly submitted claims 41 and 47 include the subject matter of non-elected inventions II (claim 25 and 30). It should be noted invention V (claims 28 and 34) has been elected by in a reply filed on 12/18/08 in response to a restriction requirement filed mailed on 11/20/08. Therefore, since claims 41 and 47 call for a triangular-shaped blade as set forth in non-elected invention II, claims 41 and 47 are withdrawn from further consideration. In addition, claim 49 calls for first and second blades to be terminate d adjacent the longitudinal axis. This feature is set forth in invention III (claims 26 and 31) which has not been elected. Therefore, claim 46 also is withdrawn from consideration.

Furthermore, newly submitted claims 38, 39, 40, and 43 are directed to an invention that is independent or distinct from the invention that has been elected following reasons: for example elected claim 34, in Subgroup V as elected in a reply filed on 12/18/08 in response to a restriction requirement filed mailed on 11/20/08, and new claims 38, 39, 40 and 43 are related as subcombinations disclosed as usable together in a single combination.

- I. Claim 34, drawn to a fruit coring device including a substantially radially inwardly facing free end of first and second blades aligned with but spaced from the longitudinal axis.
- II. Claims 38 and 39, drawn to a fruit coring device including a depth limiting feature which is supported by the handle and spaced from the circular cutting edge.

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III. Claim 40, drawn to a fruit coring device including a tubular cutting member including an interior tubular cutting member that is devoid of any other feature, other than the first and the second blades.

IV. Claim 43, drawn to a fruit coring device including a tubular cutting member including an elongated recess or cutout which inn a tubular cutting member.

Claim 29 link(s) inventions I-IV. The restriction requirement among the linked inventions is **subject to** the nonallowance of the linking claim(s) 29. Upon the indication of allowability of the linking claim(s), the restriction requirement as to the linked inventions **shall** be withdrawn and any claim(s) depending from or otherwise requiring all the limitations of the allowable linking claim(s) will be rejoined and fully examined for patentability in accordance with 37 CFR 1.104 **Claims that require all the limitations of an allowable linking claim** will be entered as a matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier. Amendments submitted after final rejection are governed by 37 CFR 1.116; amendments submitted after allowance are governed by 37 CFR 1.312. Applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, the allowable linking claim, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Where a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

The inventions are distinct, each from the other because of the following reasons:

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2. Inventions I-IV are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, e.g., subcombination I has a separate utility such as it could be used without the above-mentioned feature, as set forth in inventions II-IV. Conversely, each one of the subcombinations II-IV has a separate utility such as it could be used without the above-mentioned feature, as forth in invention I. See MPEP § 806.05(d).

It should be noted that the search for each individual invention may overlap but they do not coincide identically throughout. Therefore, the search for the elected invention may not be sufficient for the other non-elected inventions. Therefore, each individual invention includes a different field of search. In addition, the text and subclass search that might be needed to look for a particular feature in one invention is not sufficient for finding another particular feature in other invention due to their divergent subject matter. In other words, each individual invention with at least a distinct feature has a separate status in the art and requires a different field of search.

Since applicant has received an action on the merits for the claims that have been elected; accordingly, claims 38-41, 43, 46 and 47 are withdrawn from consideration as being directed to an invention that has not been elected and examined. *See 37 CFR 1.142(b) and MPEP § 821.03.*

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

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The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 23, 28, 29, 34, 42, 44, 45, and 48 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Regarding claim 23, “the at least one blade extends toward and parallel to and coincident with the longitudinal axis” is not disclosed in the original specification. It should be noted that elected Species XXII (Figs. 22A-22C) and their descriptions in the specification do not teach that the blade 11 extends parallel to and coincident with the longitudinal axis. The blade 11 is inclined downwardly. Therefore, it is not parallel to the longitudinal axis 15. Regarding claim 29, “the first and the second blades each extend toward and parallel to and coincident with the longitudinal axis” also is not disclosed in the original specification for the same reasons set forth above. Regarding claim 48, “the at least one planar blade extends radially inwardly toward and parallel to and coincident with the longitudinal axis” also is not disclosed in the original specification for the same reasons set forth above. Regarding claim 34, “free end of each of the first and second blades is aligned with but spaced from the longitudinal axis” is not disclosed in the specification. The free end of blade 11 is inclined with respect to the longitudinal axis. Therefore, the free end of the blade 11 is not aligned with the longitudinal axis. See Fig. 22C of the elected Species. Regarding claim 44, “an inwardly facing edge of tubular cutting member is sufficiently sharpened to assist with gripping and securing the core

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within the tubular cutting member” is not disclosed in the original specification. Regarding claim 45, “the tubular cutting member is sufficiently this so as to form the cutting edge that is sufficiently sharp” is not disclosed in the original disclosure. It should be noted that withdrawn claims 43 (calls for a recess or cutout) include also subject matter that is not disclosed in the specification.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 23, 28, 29 and 34, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Bartholomew, Jr. (Des. 251,698), herein after Bartholomew, in view of Rink (3,127,939) or James (6,904,686) or Rosenbloom (Des. 130,116). Regarding claims 23, 29 and 48, Bartholomew teaches a fruit coring device including a handle, a tubular member having first and second ends defining a longitudinal axis extending longitudinally through a center of the tubular member, the tubular member having an interior cavity, the handle being connected adjacent the first end of the tubular member and the second end defining a circular and planar cutting edge. Bartholomew also teaches at least one blade having a planar cutting edge, and at least one blade being supported within the interior of the cavity of the tubular member, by an inwardly facing surface of the tubular member such that the at least one blade extends toward and parallel to and coincident with the longitudinal axis

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and is solely supported within the interior cavity by a side wall of the tubular member, and the planar blade cutting edge lies in a plane defined by the circular and planar cutting edge. See Figs. 1-2 in Bartholomew. Bartholomew does not specifically teach that the blade is formed by a cut formed in a sidewall of the tubular member and the cut sidewall is bent inward into the interior cavity of the tubular member. However, it is well known in the art to form blades by bending part of a base inwardly such as taught by Rink, James, and Rosenbloom. Rink teaches a blade 14 which is only supported by the inwardly facing surface of a tubular member 11, and the blade is formed by a cut formed in a sidewall of the tubular member and the cut sidewall is bent inward into the interior cavity of the tubular member. See Figs. 1-4 in Rink. James also teaches a blade 40 which is only supported by the inwardly facing surface of a tubular member, and the blade is formed by a cut formed in a sidewall of the tubular member and the cut sidewall is bent inward into the interior cavity of the tubular member. See Figs. 1-3 in James. Rosenbloom also teaches blade that is only supported by the inwardly facing surface of a tubular member, and the blade is formed by a cut formed in a sidewall of the tubular member and the cut sidewall is bent inward into the interior cavity of the tubular member. See Figs. 1-3 in James. It should also be noted that the James and Rosenbloom also teach that the blade extends at least half way toward the longitudinal axis that pass through the center of the tubular member. It would have been obvious to a person of ordinary skill in the art to form the blades of Bartholomew's cutting apparatus, by cuts formed in a sidewall of the tubular member in a manner that the blades are only supported by the inwardly facing surface of the tubular member, as taught by, Rink, James, or

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Rosenbloom, in order to form the blades in an alternative way that reduces the manufacturing cost of the apparatus and produces the same result.

Regarding claims 28 and 34, Bartholomew, as modified above, teaches everything noted above including a substantially radially inwardly facing free end of each of the first and second blades is aligned with but spaced from longitudinal axis.

Regarding claims 42, 44 and 45, Bartholomew, as modified above, teaches everything noted above including that the first and second blades are permanently attached to the tubular cutting member; an inwardly facing edge of the tubular member is sufficiently sharpened to assist with gripping and securing retaining the core within the tubular cutting member during the removal of the core; and the tubular cutting member is sufficiently thin so as to form the cutting edge which is sufficiently sharp.

7. Claims 23, 28, 29 and 34, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over McClean in view of Rink (3,127,939) or James (6,904,686) or Rosenbloom (Des. 130,116) and in further view of Sajnaj (2,249,399) or Siersdorfer (419,722). Regarding claims 23, 29 and 48, McClean teaches a fruit coring device including a handle, a tubular member having first and second ends defining a longitudinal axis extending longitudinally through a center of the tubular member, the tubular member having an interior cavity, the handle being connected adjacent the first end of the tubular member and the second end defining a circular and planar cutting edge. McClean also teaches at least one blade having a planar cutting edge, and at least one blade being supported within the interior of the cavity of the tubular member, by an inwardly facing surface of the tubular member such that the at least one blade extends toward and parallel to and coincident with

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the longitudinal axis and is supported within the interior cavity by a side wall of the tubular member, and the planar blade cutting edge lies in a plane defined by the circular and planar cutting edge. See Figs. 1-4 in McClean. McClean does not specifically teach that the blade is formed by a cut formed in a sidewall of the tubular member and the cut sidewall is bent inward into the interior cavity of the tubular member. However, it is well known in the art to form blades by bending part of a base inwardly such as taught by Rink, James, and Rosenbloom. Rink teaches a blade 14 which is only supported by the inwardly facing surface of a tubular member 11, and the blade is formed by a cut formed in a sidewall of the tubular member and the cut sidewall is bent inward into the interior cavity of the tubular member. See Figs. 1-4 in Rink. James also teaches a blade 40 which is only supported by the inwardly facing surface of a tubular member, and the blade is formed by a cut formed in a sidewall of the tubular member and the cut sidewall is bent inward into the interior cavity of the tubular member. See Figs. 1-3 in James. Rosenbloom also teaches blade that is only supported by the inwardly facing surface of a tubular member, and the blade is formed by a cut formed in a sidewall of the tubular member and the cut sidewall is bent inward into the interior cavity of the tubular member. See Figs. 1-3 in James. It should also be noted that the James and Rosenbloom also teach that the blade extends at least half way toward the longitudinal axis that pass through the center of the tubular member. It would have been obvious to a person of ordinary skill in the art to form the blades of McClean's cutting apparatus, by cuts formed in a sidewall of the tubular member in a manner that the blades are only supported by the inwardly facing surface of the tubular member, as taught by, Rink, James, or Rosenbloom, in order to form the blades in an alternative way that reduces the manufacturing cost of the

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apparatus and produces the same result. McClean, as modified above, does not teach explicitly that the blade or blades are not supported by the handle or upper wall portion in the interior cavity. However, the use of a cutting device which includes blades supported by a side wall of a circular tubular member and not with the handle is well known in the art such as taught by Sajnaj or Siersdofer. Sajnaj teaches blades 3 supported within an internal cavity of a tubular circular member 1. Sajnaj also teaches that the blades are separated from a handle 4, 5 and are not supported by the handle. See Figs. 1-4. Siersdofer also teaches a slicing apparatus including blades 12 supported in an internal cavity of the apparatus by only a side wall of within the internal cavity. See Figs. 3-4 in Siersdofer. It would have been obvious to a person of ordinary skill in the art to alternatively provide McClean's cutting apparatus, as modified above, with the handle, as taught by Sajnaj or Siersdofer, in order to separate the handle from the blades, since both apparatus one with blades connected to the handle and the other with the blades not connected to the handle are art-recognized equivalents that produce the same result.

Regarding claims 28 and 34, McClean, as modified above, teaches everything noted above including a substantially radially inwardly facing free end of each of the first and second blades is aligned with but spaced from longitudinal axis.

Regarding claims 42, 44 and 45, McClean, as modified above, teaches everything noted above including that the first and second blades are permanently attached to the tubular cutting member; an inwardly facing edge of the tubular member is sufficiently sharpened to assist with gripping and securing retaining the core within the tubular cutting member during

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the removal of the core; and the tubular cutting member is sufficiently thin so as to form the cutting edge which is sufficiently sharp.

Response to Amendment

8. Applicant's arguments with respect to claims 23, 29 and 48 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Walzad et al. (D547,620), Bartholomew (Des. 253,390), Manos (Des. 342,651), and Siersdorfer ((419,722) teach a fruit coring device.

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ghassem Alie whose telephone number is (571) 272-4501.

The examiner can normally be reached on Mon-Fri 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley reached on (571) 272-4502. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, SEE <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ghassem Alie/
Primary Examiner, Art Unit 3724

May 20, 2010